IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WA.No. 1782 of 2007()

AGAINST THE JUDGEMENT IN OP.3443/1998 Dated 22/06/2007
.....

APPELLANT: RESPONDENTS
---

1. THE DEPUTY GENERAL MANAGER,
STATE BANK OF INDIA,
ZONAL OFFICE, SHANMUGHAM ROAD,
ERNAKULAM.

2. THE BRANCH MANAGER,
STATE BANK OF INDIA,
KAINATTY BRANCH, KAINATTY P.O.,
KOZHIKODE DISTRICT.

BY ADV. SRI.GEORGE THOMAS (MEVADA)

RESPONDENTS: PETITIONER

MR.K.K.BABURAJAN,
KANNANKUNNUMMAL HOUSE,
P.O.THAMARASSERY,
KOZHIKODE DISTRICT.

BY ADV. SMT.VIDHYA. A.C

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.S.RADHAKRISHNAN & A.K.BASHEER, JJ

W.A. 1782/2007

Dated this the 13th day of September, 2007

JUDGMENT

Radhakrishnan, J

This appeal has been preferred by the State Bank of India with a prayer to set aside the judgment of the learned Single Judge directing reinstatement of the respondent in service. Writ petition was preferred by the respondent herein seeking a declaration that the termination of the employment of the petitioner as Messenger by the respondents is illegal and void for non compliance with provisions of Chapter 5(A) of the Industrial Dispute Act and also for a writ of mandamus directing the respondents to reinstate the petitioner with back wages from 1.12.1996 in the post of Messenger in the respondent bank.

2. Petitioner had worked as temporary Messenger in the Bank and he had more than 240 days of service in the Bank and was illegally terminated from service. There were several persons who had worked in the Bank on temporary basis who had completed 240 days. On that basis rank list was prepared and the list was valid upto 31.3.1997 for

filling up the vacancies existing till 31.3.1994. According to the Bank going by the seniority list petitioner could not find a place in terms of that settlement and therefore, he was not absorbed. Bank had taken up the stand that under Article 226 of the Constitution of India, this Court cannot give a direction to the Bank to reinstate the petitioner in service and if at all the petitioner has a claim, he has to agitate the matter under the Industrial Dispute Act.

3. The learned Single Judge however allowed the writ petition taking up the stand that since the Bank has admitted that the petitioner had more than 240 days of service, there is no justification in denying the reinstatement and relegating the petitioner to other remedies under the Industrial Disputes Act. Counsel appearing for the Bank placed reliance on the decision of the apex Court in **ONGC Ltd., and Another v. Shyamal Chandra Bhowmik (2006 (1) SCC 337)** wherein the Court held as follows:-

> Almost all the decisions referred to above, related to matters which came to the High Court

> after evidence was led before the Tribunal by the contesting parties. The High Courts should not entertain writ petitions directly when claim of service of more than 240 days in a year is raised. Whether a person has worked for more than 240 days or not is a disputed question of fact which is not to be examined by the High Court. Proper remedy for the person making such a claim is to raise an industrial dispute under the Act so that the evidence can be analysed and conclusion can be arrived at. As in the instant case the legal position has not been analysed in the proper perspective. It would be appropriate if the matter is decided by the forum provided under the Act.

4. Another decision of the Apex Court reported in **National Engineering Industries Ltd., v. State of Rajasthan and Other (2000 (1) SCC 371)** may also be noted, the operative portion of the same reads as follows:

> The settlement is arrived at during the conciliation proceedings it is binding on the members of the Worker's Union as laid down by Section 18(3)(d) of the Act. It would ipso facto

> bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under Section 12(3) of the Act. The Act is based on the principle of collective bargaining for resolvoing industrial disputes and for maintaining industrial peace. It is also stated by the Apex Court that " in all the negotiations based on collective bargaining the individual workman necessarily recedes to the background. Settlements will encompass all the disputes existing at the time of the settlement except those specifically left out."

5. Learned counsel for the appellants submitted that there is no justification in the learned Single Judge interfering with the matter under Article 226 of the Constitution of India.

6. Going by the decision of the Apex Court in ONGC's case, this Court is not justified in giving such a declaration as requested by the petitioner, the respondent herein. The list prepared was valid only upto 31.3.1997 for filling up the vacancies existing till 31.3.1994. This Court, in our view, is not justified in directing

reinstatement of the petitioner on the ground that he had completed 240 days. These are all issues to be decided by the appropriate forum and not by this Court under Article 226 of the Constitution of India. In such circumstances, we are inclined to set aside the judgment of the learned Single Judge and allow this appeal. Petitioner may work out his remedy before the appropriate forum.

K.S.RADHAKRISHNAN
Judge

A.K.BASHEER
Judge

mrcs